

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**Bky. Case No. 03-47896-NCD
Chapter 7**

Clarice E. Rice,

Debtor.

Debtor.

**NOTICE OF HEARING AND
OBJECTION TO CLAIMED EXEMPT PROPERTY**

TO: Debtor; Debtor's attorney; the United States Trustee and other parties in interest.

1. Timothy D. Moratzka ("Trustee"), by its undersigned attorneys, moves the Court for the relief requested below, and gives notice of hearing herewith.

2. The Court will hold a hearing on this objection at 2:00 p.m. on Wednesday, February 18, 2004, in Courtroom No. 7 West, United States Courthouse, 300 South Fourth Street, Minneapolis, Minnesota before the Honorable Nancy C. Dreher, or as soon thereafter as counsel may be heard.

3. Any objection to the relief requested herein must be filed and delivered not later than Thursday, February 12, 2004, which is three (3) days before the time set for the hearing (excluding Saturdays, Sundays and holidays), or filed and served by mail not later than Friday, February 6, 2004, which is seven (7) days before the time set for the hearing, (excluding Saturdays, Sundays and holidays). **UNLESS A WRITTEN RESPONSE IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**

4. The petition commencing this Chapter 7 case was filed November 10, 2003, and the case is now pending in this Court. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 1334 and 157(a), Federal Bankruptcy Rule 5005 and Local Rule 1070-1, and applicable rules. This is a core proceeding.

5. This motion is filed pursuant to Bankruptcy Rule 4003(b) and Local Rule 4003-1 and 9013 et seq. and Trustee objects to the Debtor's claim that the following property is exempt under the applicable exemption statute:

- a. Pending Personal Injury Settlement
Value: 17,425.00
11 U. S. C. § 522 (d) (10) (D)*
Value Claimed Exempt: \$17,425.00
*Trustee believes that this may be a typographical error. This exemption claim is for alimony, support, etc.

6. Trustee objects to the exemption listed above because:

According to the testimony and schedules of the Debtor there are unpaid medical bills. Any recovery for medical expenses as a result of the perjury injury claim is not on account of personal bodily injury but is compensation for actual pecuniary loss is property of the bankruptcy estate and not exempt and medical bills and property damage recoveries are not allowed exempt. 11 U.S.C. §522(d) (11) (D). The claims for unpaid medical bills scheduled as creditors are as follows:

Abbott Northwestern	\$150.00
Dynamic Family Chiropractic	\$3,608.00
Emergency Physicians	\$35.00
EPPA Emergency Physicians	\$353.00
Fairview Health Services	\$957.00
Methodist Hospital	\$1,550.00
Park Nicollet Clinic	\$26.00
Southdale Int'l Medical	<u>14.00</u>
TOTAL:	\$6,693.00

WHEREFORE, Trustee respectfully moves the Court for an order sustaining the Trustee's motion to Debtor's claimed exemption listed herein and for such other relief as may be just and equitable.

Dated: January 12, 2004

MACKALL, CROUNSE & MOORE

By /e/Timothy D. Moratzka
Timothy D. Moratzka (Atty No. 75036)
Attorneys for Trustee
1400 AT&T Tower
Minneapolis, Minnesota 55402
(612) 305-1400

VERIFICATION

I, Timothy D. Moratzka, declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed on: January 12, 2004

Signed: /e/Timothy D. Moratzka
Timothy D. Moratzka

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky. Case No. 03-47896-NCD

Chapter 7

Clarice E. Rice,

Debtor.

MEMORANDUM IN SUPPORT
OF TRUSTEE'S MOTION

FACTS

According to the Schedules Debtor claims that the following property is exempt (the "Exemption") under the applicable exemption statute:

This motion is filed pursuant to Bankruptcy Rule 4003(b) and Local Rule 4003-1 and 9013 et seq. and Trustee objects to the Debtor's claim that the following property is exempt under the applicable exemption statute:

Pending Personal Injury Settlement

Value: 17,425.00

11 U. S. C. § 522 (d) (10) (D)*

Value Claimed Exempt: \$17,425.00

*Trustee believes that this may be a typographical error. This exemption claim is for alimony, support, etc.

Trustee objects to the exemption listed above because:

According to the testimony and schedules of the Debtor there are unpaid medical bills. Any recovery for medical expenses as a result of the perjury injury claim is not on account of personal bodily injury but is compensation for actual pecuniary loss is property of the bankruptcy estate and not exempt and medical bills and property damage recoveries are not allowed exempt. 11 U.S.C. §522(d) (11) (D). The claims for unpaid medical bills scheduled as creditors are as follows:

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Dynamic Family Chiropractic	\$3,608.00
Emergency Physicians	\$35.00
EPPA Emergency Physicians	\$353.00
Fairview Health Services	\$957.00

Methodist Hospital	\$1,550.00
Park Nicollet Clinic	\$26.00
Southdale Int'l Medical	<u>14.00</u>
TOTAL:	\$6,693.00

ARGUMENT

The Debtor has testified that there were medical expenses and property damages incurred as a result of an automobile accident and that Debtor's personal injury action included a claim for actual pecuniary loss. The personal injury action is property of the estate. 11 U.S.C. §541(a). Any compensation for actual pecuniary loss is not exempt under 11 U. S. C. § 522 (d)(11)(D).

CONCLUSION

For all the reasons set forth herein, Trustee is entitled to an order for recovery of any and all medical expenses or property damage claims that are or will be discharged in the bankruptcy as property of the bankruptcy estate and for such other relief as may be just and equitable.

Dated :January 12, 2004

Respectfully submitted,

MACKALL, CROUNSE & MOORE

By /e/Timothy D. Moratzka
 Timothy D. Moratzka (Atty No. 75036)
 Attorneys for Trustee
 1400 AT&T Tower
 Minneapolis, Minnesota 55402
 (612) 305-1400

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky. Case No. 03-47896-NCD
Chapter 7

Clarice E. Rice,

Debtor.

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Cheryl DeBettignies, employed by Mackall, Crounse & Moore, attorney(s) licensed to practice law in this court, with office address of 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, MN 55402-2859, declares that on the date set forth below, I served the annexed **Notice of Hearing and Objection to Claimed Exempt Property, Memorandum in Support of Objection, and proposed Order** upon each of the entities named below by mailing to each of them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Ian T. Ball
12 South 6th Street
Suite 326
Minneapolis, MN 55402

Clarice E. Rice
3945 Lancaster Lane
Apt. 120
Plymouth, MN 55441

And I declare, under penalty of perjury, that the foregoing is true and correct.

Dated: January 13, 2004

By /e/ Cheryl DeBettignies

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Bky. Case No. 03-47896-NCD

Chapter 7

Clarice E. Rice,

Debtor.

ORDER

The above-entitled matter came before the Court for hearing on February 18, 2004, on the motion of Timothy D. Moratzka, trustee for the above-referenced Debtor, objecting to the exemption claim of the Debtor to the extent it includes reimbursement of medical expenses incurred in a possible personal injury action. Appearances were noted in the Court's record. Based upon the proceedings had on said date, the statements of counsel, and all of the files and records herein, the Court now finds grounds for sustaining the Trustee's objection.

NOW, THEREFORE, IT IS HEREBY ORDERED that any portion of the damages award from the personal injury action on account of medical expense and property damage is not exempt, shall be administered as property of the estate and is to be paid directly to the Trustee.

Dated: _____

Honorable Nancy C. Dreher
United States Bankruptcy Judge